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NO. 85-1144

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1985

KAREN SISTRUNK, SONYA SISTRUNK
and BETTY MAE RUTLAND,

Petitioners

versus

CIRCLE BAR DRILLING COMPANY,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT

The Fifth Circuit's decision is consistent with this Court's decisions in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970), *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, *reh. denied*, 415 U.S. 986 (1974), and *Mobil Oil Corporation v. Higginbotham*, 436 U.S. 618, *reh. denied*, 439 U.S. 884 (1978).

ARGUMENT

Respondent, Circle Bar Drilling Company, respectfully requests this Court to deny the Petition for Writ of Certiorari, seeking review of the Fifth Circuit's opinion, reported at 770 F.2d 455 and reproduced in the Appendix filed by petitioners. As stated therein:

> The question before this court now is whether the loss of society damages awarded in *Gaudet* may be recovered by parents where they are not dependent on the seamen, and where the seamen were killed in territorial waters and are survived by spouse and/or children.[1]

Applying the twin principles of uniformity and solicitude to seamen, established by this Court in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970), and *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, *reh. denied*, 415 U.S. 986 (1974), the Fifth Circuit answered that question in the negative, holding that the parents, petitioners herein, are not entitled to recovery.

Contrary to the assertions made by petitioners, the Fifth Circuit's opinion is not in conflict with any decision of this Court, but, instead, preserves uniformity in the law of maritime wrongful death by refusing to "create vagaries in admiralty jurisdiction that *Moragne* was designed to destroy."[2] In *Moragne*, this Court, to achieve uniformity and to eliminate anomalies existing in the area of maritime wrongful death, overruled eighty-four years of precedent, dating back to *The Harrisburg*, 119 U.S. 199 (1886), and

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[1] 770 F.2d at 458

[2] 770 F.2d at 459

held that an action lies under general maritime law for death caused by unseaworthiness. The Court's main concern in *Moragne* was to establish a remedy for the surviving spouses, orphans and dependents of dead seamen. That concern was reiterated in *Gaudet*, wherein the Court stated that *Moragne* was

> . . . designed to extend to the *dependents* of maritime wrongful death victims admiralty's "special solicitude for the welfare of those men. . ." Our approach to the resolution of the issue before us must necessarily be consistent with the extension of this "special solicitude" to the *dependents* of the seafaring decedent. (Emphasis added).
>
> 414 U.S. at 577.

In *Mobil Oil Corporation v. Higginbotham*, 436 U.S. 618 (1978), this Court reaffirmed the principle of uniformity, to be sacrificed only in those instances where a statute dictates otherwise. This is not one of these instances. The only statute applicable to the wrongful death of seamen in territorial waters is the Jones Act, which provides no remedy for petitioners. Thus, the Fifth Circuit's decision, denying recovery to petitioners, is consistent with *Moragne*, *Gaudet*, and *Higginbotham* and preserves the uniformity of maritime law by providing complete identity among the beneficiaries of seamen whether death resulted from negligence or unseaworthiness.

The adoption of the DOHSA schedule, advocated by petitioners, was expressly rejected by the Fifth Circuit, because it would create the following anomalies:

> . . .first, where the death occurs in terrritorial waters, parents like those in this case could

> recover for loss of society on the basis of unseaworthiness under *Moragne* but not for negligence under the Jones Act, *see Smith*, 612 F.2d at 226; *Ivy*, 606 F.2d at 529; and second, and even more anomalous, parents similarly situated to those in this case would have a cause of action for loss of society if the death occurred in territorial waters but not if the death occurred on the high seas, *see* DOHSA, 46 U.S.C. § 762 (1982) (no recovery for nonpecuniary damages); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625, 98 S.Ct. 2010, 2015, 56 L.Ed.2d 581 (DOHSA exclusive remedy for deaths occurring on the high seas).[3]

Petitioners' argument that denial of recovery to the parents would run counter to admiralty's aim of special solicitude to the survivors of seamen, was likewise found to be without merit by the Fifth Circuit for two reasons:

One, if solicitude means providing financial support, it has no relevance in this case, because petitioners did not receive any support and were not dependent on their deceased sons. Two, if solicitude means providing the survivors peace of mind both before a seaman embarks on a sea voyage and after his death, his parents still would not be entitled to recover because

> . . .admiralty cannot provide the parents solicitude at a voyage's outset when their right to recover for loss of society is dependent on the fortuity that the deaths occur in territorial waters and are caused by unseaworthiness. Similarly, the parents have not explained why this court should extend to them special solicitude when, but for the happenstance that the seamen were

[3] 770 F.2d at 459

killed in territorial waters and by unseaworthiness, Congress would have denied them recovery under DOHSA and the Jones Act.[4]

In sum, petitioners have failed to prove any inconsistency between the decision for which review is being sought and prior decisions of this Court and have further failed to pr[illegible]t the principles of uniformity and solicitude wo[illegible] served by a reversal of the Fifth Circuit's decision.

CONCLUSION

The Fifth Circuit's decision, refusing to create new anomalies in the law of admiralty, is based upon and consistent with this Court's opinions in *Moragne*, *Gaudet* and *Higginbotham*. The Petition for a Writ of Certiorari fails to state any grounds for this Court's exercise of supervisory jurisdiction and should be denied.

Respectfully submitted,

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[4] 770 F.2d at 460

CERTIFICATE OF SERVICE

The undersigned counsel for respondent has caused three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to be served on Gerald E. Meunier, Esquire, 1718 First NBC Building, New Orleans, Louisiana 70112, by placing same in the United States Mail, postage prepaid, this _____ day of _____, 1986.

_____

MARGOT MAZEAU